REMARKS

In the Claims:

Claims 103 and 116 are amended herein. Claims 103 and 116 are amended to clarify that the claimed kit contains a composition for topical administration. No new matter is added by amendment of claims 103 and 116 and support for amended claims 103 and 116 may be found, for example at claim 80, and throughout the specification, including at page 6, lines 18-20; pages 7-8; page 11, line 28-page 12, line 2; page 12, lines 9-13, lines 19-29; page 13, lines 1-21, lines 25-29; page 14, lines 1-3; and page 25, lines 12-14.

Restriction Requirement:

The Office communication mailed January 24, 2006 set for a requirement for restriction between:

Group I – Claims 80, 89, 109, 112-115, drawn to a method for reducing the size of a closed wound, classified in class 424, subclass 443; and

Group II – Claims 103, 111, 116-118, drawn to a kit for reducing the size of a closed wound, classified in class 424, subclass 400.

Although the Examiner acknowledges that the inventions of Groups I and II are related as product (Group II) and process of use (Group I), the Examiner alleges that the inventions are distinct because the product can be used in a materially different process, such as oral or parenteral application (*i.e.,* the product claims are not directed to topical application, but the process claims are).

In addition, the Examiner alleges that the application contains claims to patentably distinct species. In particular, the invention of Group I contains the following allegedly patentably distinct species:

a) method of claim 80 that requires NSAID and carrier, and

b) method of claim 112 that requires NSAID, carrier, and second active agent.

The invention of Group II contains the following allegedly patentably distinct species:

a) kit of claim 103 that requires NSAID and carrier, and

b) kit of claim 116 that requires NSAID, carrier, and second active agent.

Election: Applicants elect with traverse to prosecute Group I, claims 80, 89, 109, and 112-115, drawn to a method for reducing the size of a closed wound. Applicants also elect to prosecute species a) of Group I, *i.e.* method of claim 80 that requires NSAID and carrier. Claims 89, 103, 109, and 111 read on claim 80 and therefore, should be examined with claim 80. In addition to claim 80, claim 109 is also of particular interest.

Applicants traverse the Examiner's separation of Groups I and II because Applicants have herein amended the product claims of Group II to clarify that they are directed at topical application. Therefore, the inventions are not distinct. According to § 806.5(h) of the MPEP, an invention can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process.

The inventions of Group I and Group II (as amended) are not distinct because the process for using the product, *i.e.,* topical administration to treat a closed wound, cannot be used with another materially different product because the claims of Groups I and II are directed to the same composition (*i.e.,* a composition consisting essentially of a pharmaceutically acceptable carrier; and at least one non-steroidal anti-inflammatory agent selected from the group consisting of: salicylic acid; aryl, substituted or unsubstituted aralkyl, allyl, and substituted or unsubstituted, linear, branched, or cyclic alkyl esters of salicylic acid; sulindac sulfide; sulindac sulfone; sulfasalazine; or pharmaceutically acceptable salts or combinations thereof; acetylsalicylic acid; aryl, substituted or unsubstituted aralkyl, allyl, and substituted or unsubstituted, linear,

branched, or cyclic alkyl esters of acetylsalicylic acid; sodium salicylate; ibuprofen; celecoxib; rofecoxib; flufenamic acid; indomethacin; nabumetone; naproxen; or pharmaceutically acceptable salts or combinations).

In addition, as amended, the invention of claims 103 and 116 of Group II is for use in the same process as the inventions of claims 80, 89, 109, and 112-115 of Group I, *i.e.,* topical administration of a composition for reducing the size or improving the appearance of a closed wound. As the Examiner acknowledges, the inventions of Groups I and II are related, and for the reasons discussed above, Applicants respectfully submit that the inventions of Groups I and II are not distinct. Therefore, restriction is not necessary. Indeed, according to MPEP § 806 (C), "where inventions are *related as disclosed*, but are *not distinct as claimed*, restriction is *never* proper." (emphasis added). Therefore, Applicants respectfully request that the Restriction Requirement be withdrawn and elect to prosecute species (a) of Group I (*i.e.,* claims 80, 89, 103, 109, and 111).

CONCLUSION

Applicants believe that currently pending Claims 80, 89, 103, 109 and 111-118 are patentable. The Examiner is invited to contact the undersigned attorney for Applicants via telephone if such communication would expedite allowance of this application.

Respectfully submitted,

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